

MSA-S-1829-4576

Comments

2/22/05 JL

Aug 9/15/05

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor



Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

September 15, 2005

Ms. Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, MD 21401

RE: Variance 2005-001-V Steven Kraemer

Dear Ms. Rhodes:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling with less setbacks than required and with disturbance to steep slopes. The property is designated a Limited Development Area (LDA) and is currently undeveloped and forested.

Providing this lot is properly grandfathered, this office does not oppose a variance to permit a dwelling on it; however, impacts must be minimized and the variance the minimum necessary. Based on the information provided, we have the following comments regarding the development proposal and variance request.

- 1) As stated in the Critical Area Report, steep slopes encumber the entire property. The site is located 800 feet from the shoreline of Saltworks Creek and the expanded Buffer does not impact the site.
- 2) The lot is 23,110 square feet and the applicant proposes 4,833 square feet of disturbance and 2,042 square feet of impervious surface coverage to construct a 1,040 square foot dwelling and deck, a 264 square foot attached garage, a 654 square foot driveway, and a 84 square foot sidewalk and stoop. The applicant has reduced the disturbance from the previous site proposal (letter dated February 22, 2005) which was 6,034 square feet and 2,525 square feet of impervious surface. The dwelling, deck and driveway have also been reduced from the previous proposal (originally 1,952 square foot dwelling and deck and a 528 square foot attached garage). The applicant has attempted to consolidate the development footprint by locating the dwelling and septic drywells close to Arundel Trail, and by locating the second backup drywell off-site in an easement

Ramona Plocienik
Variance 2005-0011-V Steven Kraemer
September 15, 2005
Page 2

proposed on an adjacent lot. Although most of the development footprint is located on slopes less than 25%, a portion of the proposed dwelling and deck are located on slopes of 25% or greater. To further reduce disturbance to steep slopes, the applicant proposes minimal grading behind the dwelling and the footers for the deck will be hand dug.

- 3) The property consists of 22,415 square feet of woodland and the proposed site plan requires 4,715 square feet of clearing. Mitigation, at a ratio of 1:1 for disturbance outside the Buffer, should be required. The applicant did not propose mitigation for forest clearing on the site plans. Plantings, consisting of native trees and shrubs, should be accommodated on the site to the extent possible.
- 4) As shown on the site plan, an infiltration device (drywell) is proposed in the southeast side yard to manage and treat stormwater from the site.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,



Gary Green
Environmental Analyst
cc: AA74-05

Robert L. Ehrlich, Jr.
Governor



Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
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1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

February 22, 2005

Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Variance 2005-0011-V Steven Kraemer

Dear Ms. Rhodes:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling with less setbacks than required and with disturbance to steep slopes. The property is designated a Limited Development Area (LDA) and is currently undeveloped.

Providing this lot is properly grandfathered, this office does not oppose a variance to permit a dwelling on it; however, impacts must be minimized and the variance the minimum necessary. Based on the information provided, we have the following comments regarding the development proposal and variance request.

- 1) As stated in the Critical Area report, steep slopes encumber the entire property. Based on GIS information from the Department of Natural Resources, it appears that the steep slopes on this property may be contiguous with steep slopes from Saltworks Creek to the south, and therefore this property may be within the expanded Buffer. Based on discussions with County staff of previous variances cases (refer to Case No. 2004-0234-V Robert Britain), it is our understanding that the Buffer would be expanded for steep slopes across Robin Hood Road. The applicant should consult with staff from the Office of Planning and Zoning to determine whether their property lies within the expanded Buffer as this case was not advertised for a Buffer variance.
- 2) The applicant proposes 6,034 square feet of disturbance and 2,525 square feet or 12.3 percent impervious surface coverage to construct a 1,462 square foot dwelling, a 528 square foot

attached garage, and a 490 square foot deck. It appears that applicant has attempted to consolidate the development footprint by locating the dwelling and septic drywells close to Arundel Trail, and by locating the second backup drywell off-site in an easement proposed on an adjacent lot. Although most of the development footprint is located on slopes less 25 percent, a portion of the proposed dwelling and deck are located on slopes of 25 percent or greater. To further reduce disturbance to steep slopes, the applicant proposes minimal grading behind the dwelling and the footers for the deck will be hand dug.

- 3) Mitigation, at a ratio of 3:1 for disturbance within the Buffer or 1:1 for disturbance outside the Buffer, should be required. As stated previously, the entire property may be located within the expanded Buffer for steep slopes contiguous with Saltworks Creek. We note that the applicant proposes mitigation for forest clearing at a ratio of 1:1 (as reported in the Area Tabulations on Sheet 1 of 2 of the site plans). Plantings, consisting of native trees and shrubs, should be accommodated on the site to the extent possible.
- 4) As shown on the site plan, an infiltration devise (drywell) is proposed in the southeast side yard to manage and treat storm water from the site.

Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case.

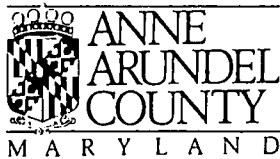
Sincerely,



Julie V. LaBranche
Natural Resource Planner

Michael Helfrich (Gamma Engineering)

AA 74-05



BOARD OF APPEALS
P.O. BOX 2700, 44 CALVERT ST., RM. 160
ANNAPOLIS, MARYLAND 21404
410-222-1119

July 29, 2005

NOTICE OF APPEAL HEARING

BA 48-05V
Steven M. Kraemer

The Board of Appeals will conduct a public hearing on the above case on Thursday, September 22, 2005 at 5:30 p.m. in the Council Chambers, First Floor, Arundel Center, 44 Calvert Street, Annapolis, Maryland.

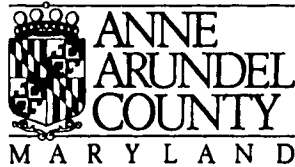
This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of variances to permit construction of a dwelling with less setbacks and buffer than required and with disturbances to steep slopes on property located 136' along the south side of Arundel Tr., 115' west of Roydon Trl., Annapolis.

Interested persons are advised to contact the Board of Appeals at 410-222-1119 to confirm that the hearing will proceed as advertised. The Board may choose to close a portion of the meeting to obtain legal advice or to discuss personnel matters as authorized by Section 10-508(a)(7) or Section 10-508(a)(1) of the Open Meetings Act.

A handwritten signature in cursive script that reads "Mary M. Leavell".

Mary M. Leavell
Clerk

cc: Property Owners ✓
News Media
Critical Area Commission
Suzy Schappert
Lori Rhodes (2005-11-V)
Anthony Christhilf, Esq.
Pat Logan, Esq.



OFFICE OF ADMINISTRATIVE HEARINGS
ARUNDEL CENTER, P.O. BOX 2700
ANNAPOLIS, MARYLAND 21404-2700
410-222-1266 FAX 410-222-1268

STEPHEN M. LeGENDRE, ESQ.
Administrative Hearing Officer

March 3, 2005

NOTICE OF HEARING

To: Property Owners Within 175 feet

Re: **Steven Kraemer - 2005-0011-V (AD 2, CD 6)** to permit a dwelling with less setbacks and buffer than required and with disturbance to steep slopes on property located 136' along the south side of Arundel Trl; 115' west of Roydon Trl, Annapolis.

Hearing Date: Thursday, April 7, 2005 at 9:30 a.m.

Location: ARUNDEL CENTER
County Council Chambers, First Floor
44 Calvert Street
Annapolis, Maryland

NOTE: It is the responsibility of the applicant to post this property for at least fourteen (14) days prior to the hearing.

Your presence at this hearing is welcome, as either a proponent or a protestant of the application. **IF YOU DECIDE TO ATTEND, PLEASE ARRIVE ON TIME. (YOUR TRAVEL TIME MAY BE INCREASED AS A RESULT OF SEVERAL ROAD AND BRIDGE CONSTRUCTION AND REHABILITATION PROJECTS IN THE ANNAPOLIS AREA.)**

Individuals who need special accommodation should call 410-222-1266 (TTY 410-222-4355) at least seven working days before the hearing. *All other inquiries should be directed to a zoning analyst with the Office of Planning and Zoning, Heritage Office Center, 2664 Riva Road, Third Floor, Annapolis - Telephone No. 410-222-7437 with reference to the above case number(s).*

cc: Office of Planning and Zoning

Lots 1-3 BK 47
20-24

Shirley Cranshaw
Manager

Ventnor Lodge
526 S. Chapelgate Lane
Baltimore, Maryland 21229

410-644-9706

Est. 1936
by
Hammond P. Dorsey
Julia L. Dorsey

Hammond B. Dorsey
Scott Trapnell Hilleary
John Thornton Hilleary
Proprietors

August 5, 2005

Anne Arundel County Board of Appeals
44 Calvert Street, Room 160
P.O. Box 2700, Annapolis, Maryland 21401

Re: Notice of appeal hearing
BA 48-05V, Steven Kramer

Attention Mary M. Leavell

We are the owners of Lots 1-5, Blk 50 located in Epping Forest, and were notified by your department of the aforementioned Appeal Hearing set for September 22, 2005 at 5:30 PM in the Council Chambers, First Floor, Arundel County, 44 Calvert St., Annapolis, Maryland.

We wish to go on record in totally opposing the requested variance to build a huge 1980 square foot structure on steep slopes which is clearly in violation of the existing code in Epping Forest and per the Critical Area Commission.

We strongly recommend that the Board of Appeals will uphold and re-affirm the ruling of the previous hearing officer in case # BA 48-05V.

In Epping Forest, builders frequently ask for and granted variances for building which negate the meaning and purpose of zoning regulations in the community that were established to protect and regulate the neighborhood and protect the residents from the blight of over-building and the negative issues arising therefrom.

It was with financial sacrifice that we preserved our woodland lots in Epping Forest with a recorded easement given to the Scenic Rivers Land Trust to do our part in trying to preserve the remaining wooded environment which will be adversely affected by continuing to grant variances allowing structures such as the one described in this case to be built in the community.

We urge you in the strongest terms that all variances in this case be denied. Period.

Very truly yours,


Scott Trapnell Hilleary

STH/jrb

cc: Scenic Rivers Land Trust
Critical Area Commission
File ✓

RECEIVED

AUG 12 2005

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

74-05

RECEIVED

MAY 5 2005

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0011-V

IN RE: STEVEN KRAEMER

SECOND ASSESSMENT DISTRICT

DATE HEARD: APRIL 7, 2005

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: LORI RHODES

DATE FILED: MAY 4, 2005

PLEADINGS

Steven Kraemer, the applicant, seeks a variance (2005-0011-V) to permit a dwelling with less setbacks than required and with disturbance to steep slopes on property located along the south side of Arundel Trail, west of Roydon Trail, Annapolis.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Kraemer testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

This case concerns unimproved property identified as Lots 1 through 3 and 20 through 24 in Section B of the Epping Forest subdivision, Annapolis. The property comprises 20,180 square feet and is zoned R-1 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to construct a two-story dwelling (30-35 by 62 feet) with integral garage and rear deck additions (basement floor 10 by 40 feet, first floor 10 by 24

feet). The construction disturbs slopes greater than 25 percent and the dwelling is as close as 10 feet from the front lot line.

Anne Arundel County Code, Article 28, Section 1A-105(d) prohibits disturbances on slopes greater than 15 percent in the LDA. Section 2-305(a) requires lots in the R-1 district to maintain a front setback in the amount of 40 feet. Accordingly, the proposal requires a variance to disturb steep slopes and a variance of 30 feet to the front setback.

Lori Rhodes, a planner with the Office of Planning and Zoning, testified that the property is entirely steep slopes and below the minimum area for the R-1 district. The applicant is proposing 2,525 square feet of impervious coverage versus an allowance of 6,306 square feet with the positioning of the dwelling intended to minimize the disturbance. In this regard, the applicant is seeking a variance of five feet from the Department of Health to locate the dwelling closer to the septic system and the decks will be cantilevered with footers installed by hand. The garage is in lieu of increased parking along narrow Arundel Trail. The witness summarized the agency comments. The Chesapeake Bay Critical Area Commission requested minimization of the impacts and mitigation. By way of conclusion, Ms. Rhodes supported the application.

Eric Fromm, who has resided on the adjacent property for 33 years, testified he has owned the property for 35 years as a nest egg.

Michael Helfrich, the applicant's engineering consultant, summarized his letter of justification. In brief, the dwelling has been moved forward to minimize

the disturbance and the proposal includes stormwater management in an infiltration drywell, hand dug footers for the decks and super silt fencing.

The hearing was well attended by area residents. Russ Good, who is an engineer for Marriott Corporation, anticipated adverse impacts from runoff, given the size of the dwelling. Elizabeth Kimrey, who holds degrees in planning and ecology, anticipated adverse impacts to water quality and wildlife. Mark Harper sought and received clarification concerning the variance procedure. John Fleming, III, disputed the efficacy of stormwater management and mitigation. Finally, Sherry Krum, who resides across from the property, and has maintained graveled Arundel Trail with Mr. Good, objected to the proximity of the dwelling to the street. She believes that road widening and increased parking will adversely impact her property.

I visited the site and the neighborhood. The property is accessed across a graveled spur from Roydon Trail. The grade falls off into the lot, first somewhat gradually, then sharply, through dense vegetation and mature trees. A variety of housing styles, many on steep slopes, characterize the neighborhood. There are certainly garages in the neighborhood, but not on Arundel Trail.

The standards for granting variances are contained in Section 11-102.1. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to

avoid an unnecessary hardship, and to enable the applicant to develop the lot.

Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the program. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I am unable to grant the requested relief. Considering the Critical Area variance, the law is clear that an applicant for a variance to the Critical Area program is obligated to show that every one of the variance standards are satisfied. In this case, the record evidence

falls short. Despite the rationale for positioning the dwelling, there is no basis to conclude that the relief has been minimized. In this regard, the applicant is proposing a dwelling with a footprint of 1,980 square and 640 square feet of decking. By comparison, the minimum dwelling size recognized by the code is only 600 square feet. See, Sec. 10-105. The simple expedient of eliminating the integral garage and the living space behind the garage (24 X 35 feet) would greatly reduce the extent of the disturbance to steep slopes. See, in this regard, Case No. BA 4-04V, In Re: Elizabeth Sherrill and Robynn Squires, (October 14, 2004), where the County Board of Appeals said “[i]f the Petitioners were simply to remove the proposed two car garage from their plan, the proposed residents (sic) could be relocated at least 20 feet further from the water’s edge.” Opinion at 5-6.¹ See also, Case No. BA 48-04V, In Re: Princess Builders, (January 6, 2005) (variance to disturb expanded buffer and steep slopes denied for home comprising 2500 square feet and two-car garage):

There must be a detailed presentation of evidence as to how a particular variance is the minimum necessary to grant an applicant relief. In this case, the County urged the removal of a portion of the proposed garage. That lessened encroachment within the sensitive areas of the Critical Area would reduce the amount of variance necessary here. There may be other ways to reduce impacts. The Petitioner’s failure to adequately address this issue, results in the burden of proof not being met.

Opinion at 8. See also, Case Nos. 2004-0459-V, In Re: William Huffard and Frank Citrano, (February 16, 2005) (variance to disturb expanded buffer and steep

¹ The Board denied Critical Area variances for a dwelling measuring 66 by 30 feet, including the garage and decking. *Id.* at 3. Case No. BA 4-04V has been appealed to the Circuit Court for Anne Arundel County, where the matter is pending. (Case No. C-2004-101-928.AA)

slopes denied for dwelling (56 X 45 feet) and attached garage (32 X 24 feet)), 2004-0368-V, In Re: U.S. Financial Capital, Inc., (November 15, 2004) (variance to disturb steep slopes denied for dwelling with a footprint of 2,300 square feet)² and 2004-0193-V, In Re: Steve Yelton, (July 27, 2004) (variances to setbacks and steep slopes denied for dwelling comprising 2,000 square)³.

Although it is unnecessary to consider the other variance criteria, I have done so and find the evidence to be lacking as to several of the criteria. Under subsection (b)(5), given the extent of the disturbance on extremely steep slopes and the likelihood of increased erosion during construction, the variance would adversely affect Critical Area assets and does not harmonize with the spirit and intent of the program. I further find that the variance would be detrimental to the public welfare.

Because the applicant has not met its burden of proof with respect to every variance criteria, the denial of the variance is not an unwarranted hardship.

In view of the decision on the Critical Area variance, the zoning variance is also denied.

² Case No. 2004-0368-V has been appealed to the County Board of Appeals, where the matter is pending. (Case No. BA 108-04V).

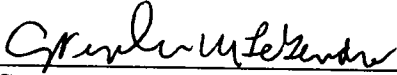
³ Case No. 2004-0193-V has been appealed to the County Board of Appeals, where the matter is pending. (Case No. BA 78-04V)

ORDER

PURSUANT to the application of Steven Kraemer, petitioning for a variance to permit a dwelling with less setbacks and buffer than required and with disturbance to steep slopes; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 4th day of May, 2005,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant's request is hereby **denied**.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise that will be discarded.

GAMMA ENGINEERING

Office of Planning & Zoning
2664 Riva Road
Annapolis, MD 21401

1203 WEST STREET, SUITE A ANNAPOLIS, MD 21401
(410) 626-1070 FAX (410) 267-8619
E-MAIL: blupt@msn.com

December 29, 2004

Variance Request – Letter of Explanation

Applicant: Steven M. Kraemer
460 Honereng Trail
Annapolis, MD 21401

Site Address: Arundel Trail, Annapolis, MD 21401
Lots 1-3 & 20-24, Block 47, Section B, Epping Forest

Site Description and Explanation: The subject property is Lots 1-3 & 20-24 of Block 47, in Section B of Epping Forest. The site contains approximately 20,595 square feet or 0.47 acres. The site is part of parcel 42 in grid 3 of Tax Map 45. The lot is zoned R-1 and is in the 2nd. Assessment District of Anne Arundel County. the lot is in the Critical Area and is designated as Limited Development Area (LDA). The site is located 800' +/- from the shoreline hence the expanded buffer does not impact the site.

The following variances are requested:

1. A 30' variance to the required 40' front yard setback in the R-1 zone Article 28, Sect. 2-305 (a) (1)
2. A variance to disturb steep slopes in the critical area. Article 28, Sect. 1A-105. (e)

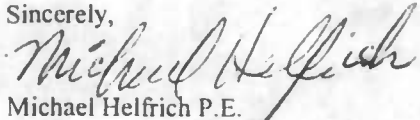
Justification for granting variances:

1. A 30' variance to the required 40' front yard setback in the R-1 - The proposed house position is intended to minimize the disturbance to slopes and forest removal. The house is placed right up to the required septic system setbacks and within 10' of the 15' community path known as "Arundel Path". A 10' front setback is proposed where the path is intended to remain unimproved and approximately a 25' setback where the road is improved. 20' to 25' is the R-5 front yard setback. The applicant suggests the R-5 setback is appropriate and characteristic to the development and typical house placement in the Epping Forest community.
2. A variance to disturb steep slopes in the critical area. The main constraint of the site is the topography in that the entire lot consists of slopes as defined in the critical area (> 15%), only the front portion is between 15% and less than 25 % and acceptable for septic system placement (one septic system backup is proposed in an offsite easement). With the granting off the requested front yard variance, the disturbance to slopes will have been minimized. Following are additional features provided to minimize adverse impact to the critical area as a result off disturbing steep slopes in the critical area:
 - a. The provision of quantity control of the 10 year storm (Overbank Protection) stormwater management in an infiltration drywell .
 - b. The minimized grading proposed around the perimeter of the house including hand dug footers for the decks.
 - c. The use of super silt fence.

The entire site is constrained by steep slopes and as a result, a literal interpretation of the critical area program would deny the applicant the right to develop the property and result in an unwarranted hardship. Conversely, the granting of the variance will not confer any special privilege the program usually denies. The variance requests are not the result of actions of the applicant. The variances represent the minimum relief and are consistent with other development in the community of Epping Forest and along the Severn River. The granting of the variance will not alter the character of the neighborhood, cause a detriment to public welfare or adversely affect the critical resources.

Please contact this office if there are any questions or if additional information is needed.

Sincerely,


Michael Helfrich P.E.

cc: Steven KraemerSP

GAMMA ENGINEERING

Ms. Lori Rhodes
Office of Planning & Zoning
2664 Riva Road
Annapolis, MD 21401

1203 West Street, Suite A Annapolis, MD 21401
(410) 626-1070 Fax (410) 267-8619
E-Mail: blupt@msn.com

September 29, 2004

Board of Appeals - Variance Request - BA 48-05 - Letter of Explanation

Site Address: Arundel Trail, Annapolis, MD 21401
Lots 1-3 & 19-24, Block 47, Section B, Epping Forest

Site Description and Explanation: The subject property is Lots 1-3 & 20-24 of Block 47, in Section B of Epping Forest. The site contains approximately 20,595 square feet or 0.47 acres, The lot is zoned R-1 and is in the 2nd. Assessment District of Anne Arundel County, the lot is in the Critical Area and is designated as Limited Development Area (LDA). The site is located 800' +/- from the shoreline but the expanded buffer may impact the site.

The following variances are requested:

1. A 28' variance to the required 40' front yard setback in the R-1 zone Article 28, Sect. 2-305 (a) (1)
2. A variance to disturb steep slopes in the critical area. Article 28, Sect. 1A-105. (c).
3. A variance to disturb critical area expanded buffer. Article 28, Sect. 1A-105. (c).

This is an appeal from the decision of the Administrative Hearing Officer for denial of variances as listed below

	Administrative hearing request	As now requested
1. Front yard	30'	28'
2. Disturbance to steep slopes	6034 sq.ft.	4833 sq.ft.
3. Buffer disturbance	6034 sq.ft.	4833 sq.ft.
4. Impervious area	2525 sq.ft.	2025 sq.ft.
5. Proposed finished living area	3500 sqft.	2820 sq.ft.
6. Proposed garage	2 car	1 car

Justification for granting variances:


1. **28' variance to the required 40' front yard setback in the R-1** - The proposed house position is intended to minimize the disturbance to slopes and forest removal. As the site plan indicates there adequate depth to the lot to provide the full 40' front setback .) The house is placed right up to the required septic system setbacks and within 12' of the 15' community path known as "Arundel Path". A 12' front setback is proposed where the path is intended to remain unimproved and a setback where the road is improved varying from 20 to 25' (20' to 25' is the R-5 front yard setback.) The applicant suggests the R-5 setback is appropriate and characteristic to the development and typical house placement in the Epping Forest community. The two other houses located on Arundel Trail have 8' and 17' setback hence the proposed setback of 20-25' (proposed where the improved road currently exists) is in character with the neighborhood. (note 1)
2. **Variance to disturb steep slopes in the critical area.** The main constraint of the site is the topography in that the entire lot consists of slopes as defined in the critical area (> 15%), only the front portion is between 15% and less than 25 % and acceptable for septic system placement (one septic system backup is proposed in an offsite easement). With the granting off the requested front yard variance, the disturbance to slopes and forest removal will have been minimized.
3. **Variance to disturb the expanded buffer in the critical area.** Although the site is located 800' +/- from the shoreline the expanded buffer may impact the site and disturbance has been minimized as discussed in 2 above.
4. **Additional design features: The following have been provided to provide additional environmental protection in excess of what is required by law:**
 - a) The provision of a conservation easement on the lots at the rear of the site to be dedicated to Anne Arundel County and/or the Severn River Commission (if the Commission will accept it). Currently conservation easements are not required unless the site has a minimum area of 10 acres.
 - b) The provision of quantity control of the 10 year storm (Overbank Protection) stormwater management in an infiltration drywell. This practice will include controls for 4 of the 5 different control requirements.
 - c) The minimized grading proposed around the perimeter of the house including hand dug footers for the decks.
 - d) The use of super silt fence.

RECEIVED
SEP 06 2005
CRITICAL AREA COMMISSION

The entire site is constrained by steep slopes and as a result, a literal interpretation of the critical area program would deny the applicant the right to develop the property and result in an unwarranted hardship. Conversely, the granting of the variance will not confer any special privilege the program usually denies. The variance requests are not the result of actions of the applicant. The variances represent the minimum relief and are consistent with other development in the community of Epping Forest and along the Severn River. The granting of the variance will not alter the character of the neighborhood, cause a detriment to public welfare or adversely affect the critical resources.

Please contact this office if there are any questions or if additional information is needed.

Sincerely,



Michael Helfrich P.E.

Note 1: The house on lots 4 and 5 was granted a variance (prepared by this office) to allow the current setbacks.

cc: Critical Area Commission
Anthony Christhilf
Steven Kraemer/kramerappeal

KRAEMER PROPERTY

CRITICAL AREA REPORT

PREPARED FOR:
GAMMA ENGINEERING
1203 WEST STREET, SUITE A
ANNAPOLIS, MD 21401

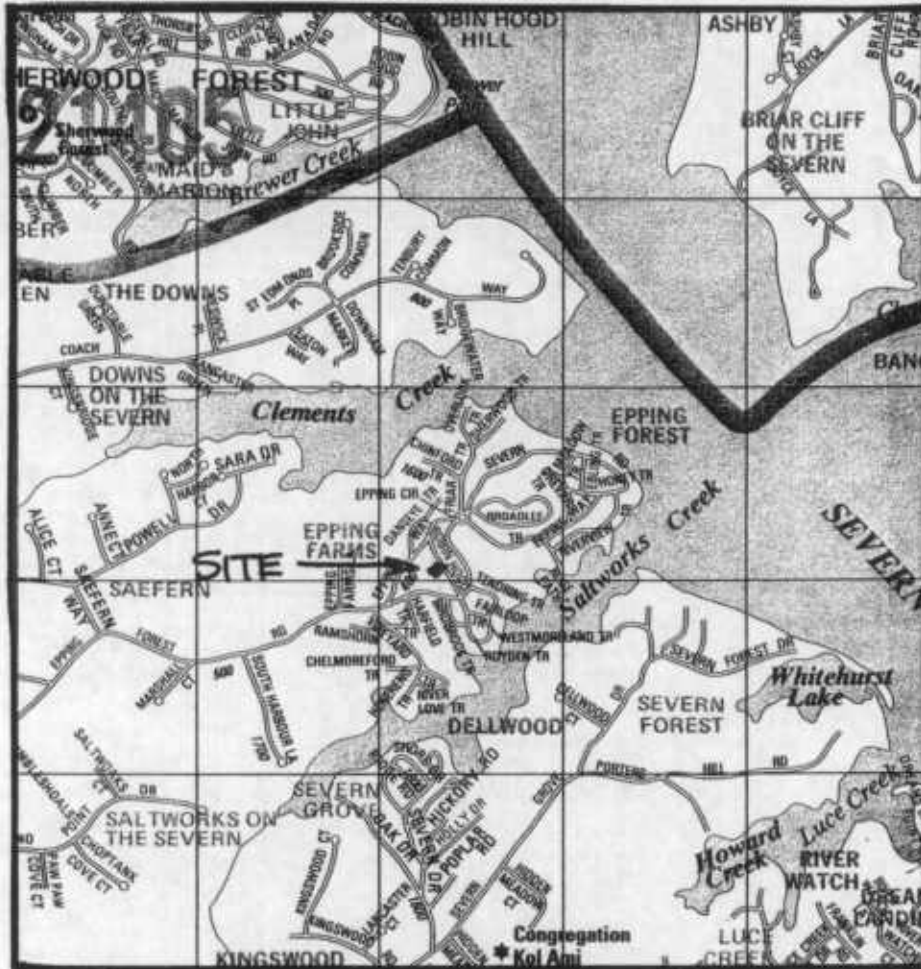
PREPARED BY:
CATTAIL CONSULTING, INC.
POST OFFICE BOX 1599
SEVERNA PARK, MD 21146

410-544-0133

AUGUST 2005

RECEIVED
SEP 06 2005
CRITICAL AREA COMMISSION

VICINITY MAP
1" = 2000'



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Permitted Use Number 20701190

KRAEMER PROPERTY

CRITICAL AREA REPORT

INTRODUCTION

The Kraemer Property is located on Arundel Trail off Roydon Trail in the community of Epping Forest. The site is about 23,000 square feet in size, is located in the Limited Development Area of the Critical Area and is proposed to be improved with one single-family residence. The site is comprised of 15% or greater slopes and it will be necessary to impact those slopes for any lot development and that is part of the reason for the variance request. The other variance being requested is for less front yard setback than required and that is requested so that impacts to the steep slopes can be minimized.

VICINITY MAP

Included in this report and shown on the attached plan is a vicinity map designating the location of the subject site. Also included in the report are portions of the nontidal wetland map of the area and the Critical Area Map with the site located.

NARRATIVE

EXISTING CONDITIONS

The lot is almost completely wooded at this time. The dominant tree species include hickory, red maple and yellow poplar in the overstory, along with holly black cherry, red maple, beech and yellow poplar in the understory. The shrub layer contains holly, chinquapin, mountain laurel and greenbriar. The ground is almost 100% covered with English ivy.

There were no rare, threatened or endangered species noted on the lot. No wildlife was noted the day of the fieldwork; however, bird and small mammal species adapted to humans would be expected to use the site for food and cover.

There are no streams, wetlands or other water features on the lot. There are steep slopes on the entire lot and that is part of the reason for the variance request. There can be no improvements to the lot without impacting the slopes.

STORMWATER MANAGEMENT

There is not stormwater management on the lot at this time. With construction of the house and its associated features (driveway, septic area), a stormwater management system will also be constructed. The system proposed is a drywell capable of managing a 10-year storm.

IMPACT MINIMIZATION

Another variance requested for this lot is to allow a reduction in the required front yard setback. The house is proposed to be constructed as close to the road as allowed in order to minimize the amount of impacts to the steep slopes (25%+). The amount of clearing proposed is less than allowed, as is the amount of impervious surface proposed. Due to the sensitive nature of the slopes, super silt fence will be installed prior to any disturbance on the lot.

HABITAT PROTECTION AREAS

The Habitat Protection Area found on this lot is the steep slope. It is not possible to do any improvements to the lot without impacting the slopes.

PROPOSED CONDITIONS AND SITE CALCULATIONS

The proposed conditions include the construction of a single-family house, its driveway, septic system and stormwater management system. The site calculations are as follows:

Total lot size	23,100 sq ft
Existing woodland	22415 sq. ft.
Proposed clearing	4715 sq ft.
Existing impervious coverage	-0- sq ft
Proposed impervious surface	2,042 sq ft

CONCLUSIONS

The referenced lot cannot be improved without impacts to the steep slopes. The owners have tried to minimize the impacts to those slopes by placing the house as close as practical to the road. Many of the houses in Epping Forest are constructed on steep slopes so allowing the owners to do so on this lot will not confer a special privilege.

The majority of the lot will be left completely undisturbed and placed in a conservation easement if required.

PLANS

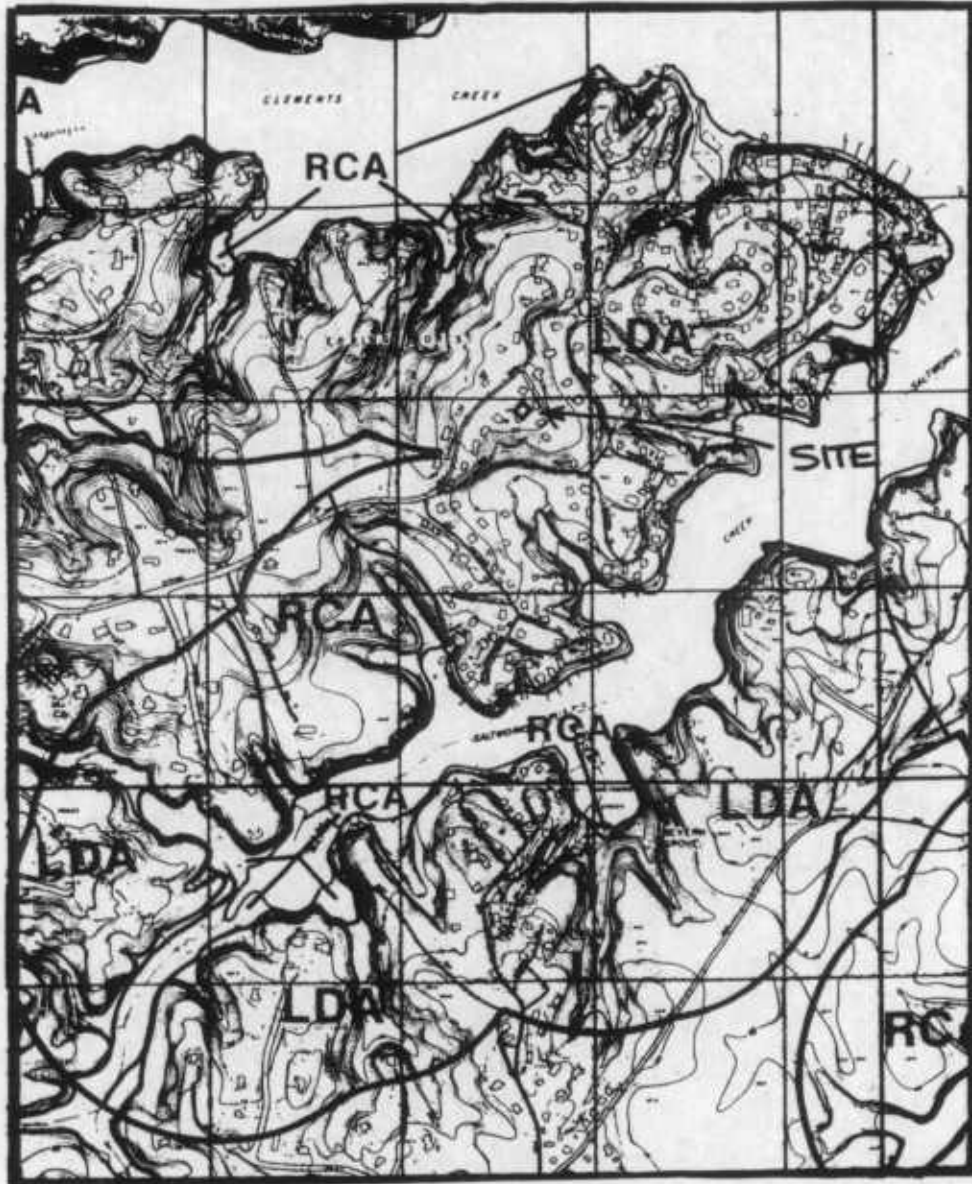
A plan showing the site and its proposed improvements is attached to this report.

ADDITIONAL INFORMATION

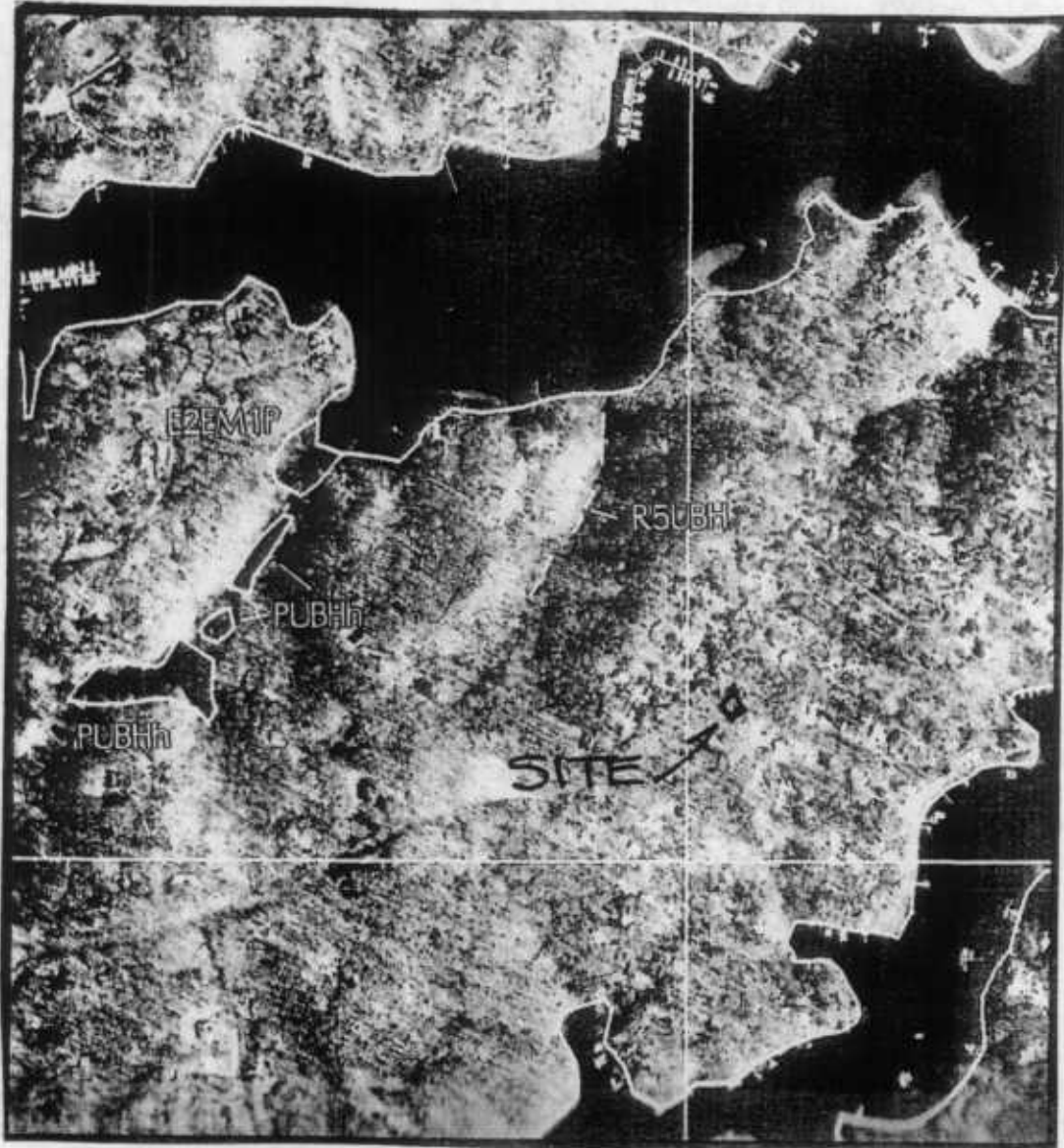
A Notification of Project Application for the Critical Area Commission is included in this package.

The fieldwork was conducted on 8/30/05.

CRITICAL AREA MAP
1" = 1000'



NONTIDAL WETLAND MAP
1" = 700'



ANNE ARUNDEL COUNTY
SOIL SURVEY



CRITICAL AREA COMMISSION

1804 West Street Suite 100
Annapolis, Md. 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: ANNE ARUNDEL Date: 8-31-05

Name of Project (site name, subdivision name, or other): KRAEMER PROPERTY

Local Case Number: _____

Project location/Address: SPRING FOREST : ARUNDEL TRAIL
LOT 1-3 & 20-24

Tax Map 45 Block 3 Lot _____ Parcel 42

Type of Application
(Select all applicable)

- Subdivision
- Site Plan
- Variance
- Buffer _____ Slope X
- Imp Surf. _____ Other _____
- Special Exception
- Conditional Use
- Rezoning
- Grading Permit
- Bldg Permit
- Intrafamily
- Growth Allocation
- Others _____

Type of Project:
(Select all applicable)

- Residential
- Commercial
- Water Dependent
Facility/Pier/Marina
- Industrial
- Mixed Use
- Redevelopment
- Shore Erosion Protect.
- Agricultural
- Other _____
(e.g. PUD)

Current Use:
(Select all applicable)

- Residential
- Commercial
- Agriculture
- Forrest/Buffer/Woodland
- Industrial
- Institutional
- Open Space/Rec
- Surface Mining
- Vacant
- Water Dependant
Facility/Pier/Marina
- Others _____

Describe Proposed use of project site: CONSTRUCTION OF A SINGLE-FAMILY HOME WITH IMPACTS TO STEEP SLOPES.

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 23 100⁺

IDA ACRES: _____ AREA DISTURBED: _____

LDA ACRES: 23 100⁺ # LOTS CREATED: _____

RCA ACRES: _____ #DWELLING UNITS: _____

AGRICULTURAL LAND: _____

EXISTING FOREST/WOODLAND/TREES: _____ FOREST/WOODLAND/TREES REMOVED _____

FOREST/WOODLAND/TREES CREATED: _____

EXISTING IMPERVIOUS SURFACE: 0 PROPOSED IMPERVIOUS SURFACE 2042⁺

TOTAL IMPERVIOUS SURFACE: 2042⁺ REMOVED IMPERVIOUS SURFACE _____

GROWTH ALLOCATION DEDUCTED: _____

RCA TO LDA: _____ RCA TO IDA: _____ LDA TO IDA _____

Local Jurisdiction Contact Person: _____

Telephone Number: _____ Fax: _____

Response from Commission required by: _____ Hearing Date: _____

CHESAPEAKE BAY CRITICAL AREA REPORT
CHECK LIST
Anne Arundel County, Maryland



TO: Property Owners in the Chesapeake Bay Critical Area

DATE: 8.31.05

FROM: Department of Planning and Code Enforcement

SUBJECT: Information Required for Submission of Critical Area Report - Zoning Applications

Zoning Case Number _____ Applicant's Name KRAEMER

Critical Area Classification: LDA/RCA/IDA; Tax Map 45 Block 3 Parcel 45

Your property is located within the Chesapeake Bay Critical Area. In reviewing your application, Planning and Code Enforcement must determine the impact your proposal will have on stormwater management and plant and animal habitat in conformance to Critical Area criteria. Your plan must meet the criteria for your classification and satisfy COMAR 14.15.11 regarding variances. You are responsible for supplying five copies of the VICINITY MAP, NARRATIVE STATEMENT AND PLAN to the Zoning Administration Division of the Department of Planning and Code Enforcement with your zoning application. Applications within the Critical Area will not be accepted without a complete Critical Area Report.

1. A brief explanation of why you need a variance or special exception. If you have applied for a building or grading permit, please list the permit number(s). _____
2. A VICINITY MAP showing clear directions to your property and the address.
3. A short, 1 or 2 sentence per item, NARRATIVE STATEMENT which provides the following information (if checked):

- Type of predominant trees and shrubs (maple, oak, evergreen, etc.) on the entire parcel. (At least 15% of the lot must have trees and shrubs or additional plantings will be required. Trees and shrubs must cover the area 25' from the water on waterfront lots except for access area.)
- Method of control of rainwater from existing and proposed structures, driveways and parking. (Where does it go now? Where will additional runoff go? Any special techniques?)
- Methods to minimize impacts on water quality and habitat from proposed construction (e.g. stormwater management, sediment control, replanting, avoiding slopes).
- Square footage of site that is currently wooded or has trees and shrubs; square footage to be disturbed by proposed work; acreage of lot; total impervious coverage before and after work (Any lot in LDA or RCA that is 21,780 square feet or less cannot have more than 25% impervious surface covered unless further restricted by plat. Lots over 1/2 acre cannot exceed 15% coverage.)
- Habitat protection areas: Buffers, expanded buffers, wetlands, rare and endangered species, anadromous fish propagation waters, colonial water bird nesting sites, historic waterfowl staging and concentration areas, riparian forests 300' or more in width, forested blocks 100 acres or more, natural heritage areas, plant and wildlife habitats of local significance.

4. A PLAN of your property, drawn to scale (a plot plan, grading plan or building location survey can be used) showing (if checked):

- Steep slopes (15% or greater - show any slope if you aren't sure of percentage of slope)
- Existing tree line, individual trees and all proposed clearing, grading or any disturbance
- Wetlands (tidal and nontidal) Floodplain (tidal and nontidal)
- Any proposed planting or landscaping on property
- Other (water depths, buffers as shown on record plat, habitat protection areas as identified in 3e, and plat notes)

5. ONE copy of a Notification of Project Application supplied with this check list.

Residential lots in IDA will be required to meet the criteria for LDA. Special circumstances where LDA criteria cannot be met will be reviewed in conjunction with the Critical Area Commission. Commercial, institutional or industrial uses in IDA must meet the 10% Pollutant Reduction Rule. If you have any questions or need assistance, please contact Lori Allen at (410) 222-7459.

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SEP 06 2005
CRITICAL AREA COMMISSION

CRITICAL AREA REPORT

FOR

EPPING FOREST

**Lot 1-3 & 20-24, Section B, Block 47
Arundel Trail**

PREPARED BY:

**Gamma Engineering
1203 West Street, Suite A
Annapolis, MD 21401**

July 1, 2004

III. Narrative Statements:

- The disturbed area is 6034 square feet or 0.14 acres.
- The impervious area will be 2525 square feet or 12.3% of the lot area or 31.25 % is allowed
- The proposed construction will not adversely affect runoff and storm water management practice of infiltration proposed for the lot.

There are none of the following designated habitat protection areas on site: riparian forests 300' or more in length, forested blocks greater than 100 acres, or natural heritage areas. The following designated protection areas do not exist on site: non-tidal wetlands, anadromous fish propagation waters, water bird nesting sites, historical waterfowl nesting, staging or concentration areas.

IV. Site Plan

The enclosed site plan shows, if applicable, all of the following: existing vegetated area and all proposed structures. The clearing proposed is as designated, no wetlands disturbance is proposed.

V. See enclosed Notification of Project application.

Sincerely,

Michael Helfrich, P.E.

Critical Area Report
Office of Planning & Zoning
2664 Riva Rd.
Annapolis, MD 21401

December 27, 2004

Applicant: Steven M. Kraemer
460 Honereng Trail
Annapolis, MD 21401

Site Address: Arundel Trail, Annapolis MD 21401
Lots 1-3 and 20-24, Block 47, Section B
Epping Forest

RE: Information required for submission of Critical Area Report

- I. **Site Description and Explanation:** The subject property is Lots 1-3, & 20-24 of Block 47, in Epping Forest. The site contains approximately 20,595 square feet or 0.47 acres. The site is part of parcel 42 in grid 3 of Tax Map 45. The lot is zoned R-1 and is in the 2nd Assessment District of Anne Arundel County. The lot is in the Critical Area and is designated as Limited Development Area (LDA).

The applicant is requesting the following variances to allow construction of a new single-family home:

- A 30' variance to the required 40' front.
- A variance to disturbed steep slopes in the critical area.

II. **See enclosed site plan for vicinity map.**

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RE: An Appeal From A Decision Of The Administrative Hearing Officer

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BEFORE THE
CRITICAL AREA COMMISSION
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO.: BA 48-05V
Hearing Date: September 22, 2005

STEVEN M. KRAEMER
Petitioner

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of variances to permit the construction of a dwelling with less setbacks and buffer than required and with disturbances to steep slopes on property located 136 feet along the south side of Arundel Tr., 115 feet west of Roydon Tr., Annapolis.

Summary of Evidence.

Ms. Lori Rhodes of the Office of Planning and Zoning testified that the property is zoned R1 and designated as LDA in the Critical Area. The Petitioner proposes to construct a two-story dwelling with a basement, garage, and three decks. The proposed dwelling has a 1,304 square foot footprint and the garage having a 264 square foot footprint. The total floor area of the dwelling is 2,300 square feet. Ms. Rhodes testified that development on steep slopes of fifteen percent or greater in the Critical Area is prohibited by Article 28, Section 1A-105 of the Anne Arundel County Code. The required setback from the front lot line is forty feet on property in the R1 District. *Id.* § 2-305. The Petitioner's proposal calls for a front yard setback of only twelve feet, thus he needs a variance of twenty-eight feet.

Ms. Rhodes further testified that the neighborhood consists of a variety of homes ranging from 1,780 to 2,944 square feet and that variances are common in the community. The subject

property meets the lot width requirement of 125 feet, however, it does not meet the required 40,000 square foot minimum for R1 property. The lot consists of steep slopes at least fifteen percent and is irregular in shape. The entire area is wooded and the Petitioner proposes to place two-thirds of the site in a forest conservation easement. The proposed disturbance is 4,833 square feet and the allowed disturbance permitted for this lot is 5,445 square feet. Arundel Trail fronts the property and is only fifteen feet wide in front of the property and narrows to eight feet as the road gets closer to Roydon Trail. The dwelling situated north of the subject property would be affected by additional on-street parking, thus, a garage would minimize the impact.

In addition, the Petitioner would need a variance of ten feet from the Health Department, in order to place the proposed dwelling closer to the septic area and drywell. Ms. Rhodes stated that the Critical Area Commission is not opposed to the Petitioner's requested variances. There would be mitigation of 1:1 for disturbance outside the buffer. No other County agencies oppose the Petitioner's proposal. Ms. Rhodes closed by stating that development of the lot in strict conformance with the code is impossible due to the irregular lot shape. She also noted that all footers for the decking will be dug by hand and that the rear of the site will be placed in a conservation easement that would reduce stormwater runoff. The County supports granting the Petitioner's variances.

Mr. Michael Helfrich of Gamma Engineering testified that the proposed dwelling has been reduced significantly since the hearing before the Administrative Hearing Officer. The two-car garage was reduced to a one-car garage, the width of the dwelling was reduced to twenty-eight feet, and the length was reduced to thirty-eight feet. Mr. Helfrich stated that the garage is necessary because of the narrowness of Arundel Trail. The Petitioner's proposed dwelling could easily be relocated to satisfy the forty foot setback requirement; however, the Petitioner wants the disturbance to the steep slopes to be as little as possible. The two other

✓ dwellings on Arundel Trail have setbacks ranging between eight and seventeen feet. In addition, the proposed decks are consistent with the neighborhood. He testified further that the basement portion of the proposed dwelling was not included in the livable square footage space because it would be primarily used for storage and utilities. The square footage of the dwelling, including the basement, would be approximately 3,300 square feet. Stormwater would be addressed by a filtration trench, a super silt fence, and a conservation easement that the Petitioner can not alter. The proposed dwelling is consistent with the surrounding neighborhood and would not have any detrimental impact on the community or the character of the neighborhood. He believes that the Petitioner would be deprived of developing the lot if the variances are not granted.

The Petitioner testified that he wants a larger home so that he and his new wife can start a family and they could continue to live in the house as the family grows.

Ms. Nancy Matthews of Cattail Consulting prepared the Critical Area Report for the subject property. She stated that the site plan is best for the property because by placing the dwelling closer to the road, the Petitioner is minimizing the disturbance to the steep slopes. Moreover, she stated that the property would have no impact on water habitat, conforms to the Critical Area regulations and is in harmony with the Critical Area Program.

Mr. Mark Harper, Mr. John J. Fleming, III, Ms. Sherry Krum, and Mr. Robert Berry, all testified in opposition of the Petitioner's proposal. The Protestants' primary concern is the disturbance and interference of land in the Critical Area. Ms. Krum also stated that she is opposed to the Petitioner's proposal because Arundel Trail is the only access she has to her property from improved roads and that she and another neighbor share the maintenance of Arundel Trail. The road is only wide enough for one vehicle and more trees would have to be cut down to accommodate the proposed use. Ms. Krum also submitted a petition opposing development of the Petitioner's lot.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The Petitioner applied for several variances to build a house on his property with less setbacks than required under the Anne Arundel County Code (Code) and with disturbance to steep slopes. The property is in an R1 Residential District; it is a non-waterfront property located in the Critical Area; and it is designated as LDA. R1 properties are required to have a front lot line setback of 40 feet, a rear lot line setback of 35 feet, and a side lot line setback of 15 feet, with a combined side lot line setback of 40 feet. Anne Arundel County Code, Article 28, Sections 2-305(a)(1)-(3). In addition, property within the Critical Area having steep slopes of 15 percent or more before development cannot be developed unless the proposed development “is the only effective way to maintain or improve the stability of the slope.” *Id.* § 1A-105(d). The Petitioner requests variances for each of the above mentioned requirements. The requirements for the setback variance and the requirements for the steep slope variance are slightly different. We address the setback variance requirements first.

The Setback Variance

In order for this Board to grant the Petitioner a setback variance, he must establish “that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with the article; or that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop such lot.” *Id.* § 2-107(a)(1)-(2). Here, the Petitioner has established that there are “exceptional topographical conditions peculiar to and inherent in” his property. In

addition to the steep slopes throughout the rear portion of the property, the lot is irregular in shape and small for property within the R1 District and does not meet the minimum size requirements of the Code. *See id.* § 2-304(a).

The Petitioner must then show that “the variance is the minimum variance necessary to afford relief.” *Id.* § 2-107(c)(1). Although the Petitioner’s original proposal was reduced in an effort to minimize the impact to the surrounding environment and to his neighbors, we find that the new proposal is not the minimum necessary to allow the Petitioner to utilize his property. The Petitioner’s new proposal provides for a large, 2,300 square foot home, not including an additional 1,000 square feet of floor area in the basement. Moreover, as Mr. Helfrich testified, the Petitioner could easily meet the forty foot setback requirements of R1 lots. The Petitioner simply does not wish to reduce the house size to meet the setback and avoid the steep slopes. This is a typical case when the applicant wants what he wants without serious regard to what the county code requires. The code is not to be varied for the convenience of the property owner, but rather only where the code criteria unreasonably restrict property rights. Accordingly, we find it clear that the Petitioner has not requested the minimum variance necessary to develop the lot.

Next, the Petitioner must establish that “the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located.” *Id.* § 2-107(c)(2)(i). There are a variety of different sized homes throughout the outlying neighborhood. However, the immediate community of Arundel Trail consists of cottage style homes. The proposed home is not a cottage home. It would be a large home that is beyond the simple character of this community and would overwhelm the nearby dwellings. Thus, we find that the Petitioner’s proposal would “alter the essential character of the neighborhood” because of its large size.

The Petitioner's next burden is to show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 2-107(c)(2)(ii). Although, many of the surrounding properties are wooded areas that have not yet been developed; the Petitioner's proposal would substantially impair the use of adjacent property because of the large scale of development on this lot. A lesser development on this lot would not impair the use of other properties.

After establishing that there would be no substantial impairment of the use or development of neighboring properties, the Petitioner must show that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area." *Id.* § 2-107(c)(2)(iii). Petitioner's proposal provides for a 1:1 mitigation ratio for disturbance outside of the buffer. Thus, we find that the proposal conforms with "the clearing and replanting practices required for development in the critical area." Anne Arundel County Code, Article 3, Section 2-107(c)(2)(iii).

Lastly, the Petitioner has the burden to show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 2-107(c)(2)(iv). As long as the Petitioner follows standard building practices and is approved for all of the proper permits, building a house is generally not detrimental to the public welfare. However, in this case, the proposed excessive development would overly impact woodlands and steep slopes in the Critical Area without sufficient justification. If the dwelling size were reduced, the setback could be increased, the building footprint decreased and the public's welfare maintained.

The Steep Slopes Variance

We next address the variance that the Petitioner needs in order to disturb steep slopes within the Critical Area. Granting a variance to the steep slopes provisions of the Critical Area Program requires the Petitioner to overcome an extremely difficult burden. The Petitioner must establish that his proposal will meet the numerous requirements set out in the Code. This Board can grant a Critical Area variance only when the Petitioner meets each element of his burden.

Development within the Chesapeake Bay Critical Area¹, being that area within 1,000 feet of the Chesapeake Bay and its tributaries, has been the subject of much legislative effort and protection by the General Assembly. Despite several court decisions that sought to lessen the power of the Critical Area Regulations, the General Assembly responded directly to these court decisions and in each case has subsequently strengthened the Critical Area Regulations. The current Critical Area variance criteria are very strict. The statute requires the Board to presume that the requested development activity does not conform to the general purpose and intent of the Critical Area Program. See, Maryland Annotated Code, Natural Resources Article, Section 8-1808(d)(2)(i). Additionally, "unwarranted hardship" is defined as "without a variance, an applicant would be denied a reasonable and significant use of the entire parcel or lot for which the variance is requested". Emphasis added. To qualify for a variance to the Critical Area criteria, an applicant must meet each and every one of the variance provisions. See, id., Section 8-1808(d)(4)(ii). An applicant must also prove that if the variance were denied, the applicant would be deprived of a use or structure permitted to others in accordance with the Critical Area Program. See, id., Section 8-1808(d)(4)(iii). Given these provisions of the State criteria for the grant of a variance, the burden on an applicant seeking a variance is very high.

The State statute requires that local jurisdictions adopt a program to protect the Critical Area. Anne Arundel County's local Critical Area variance program contains 12 separate criteria.

¹ See, Maryland Annotated Code, Natural Resources Article, Section 8-1808.

See, Code, Article 3, Board of Appeals, Section 2-107. Each of these individual criteria must be met. If the applicant fails to meet just one of these 12 criteria, the variance is required to be denied.

First, the Petitioner must show that “because of certain unique physical conditions, such as exceptional topographic conditions peculiar to and inherent in the particular lot, or irregularity, narrowness or shallowness of lot size and shape, strict implementation of the County’s critical area program would result in an unwarranted hardship to the applicant.” *Id.* § 2-107(b)(1). There is no question that the property is unique due to the narrowness and the presence of steep slopes on the rear of the property. We find that the property cannot be developed without some variance, albeit not to the extent requested by the Petitioner. Thus, a “strict implementation of the County’s critical area program would result in an unwarranted hardship” to the Petitioner. *Id.*

Next, the Petitioner must prove that “a literal interpretation of the Code of MD Regulations, Title 27, Subtitle 01, Criteria for Local Critical Area Program Development, or the County critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area of the County.” *Id.* § 2-107(b)(2). Because of the steep slopes throughout the rear of the property, the Petitioner could not develop his property without some variance to disturb the slopes. Therefore, we find that without a variance the Petitioner would be denied the “rights commonly enjoyed by other properties.” *Id.*

The Petitioner must also show that “the granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, Title 27, Subtitle 01 or the County critical area program to other lands or structures within the County critical area.” *Id.* § 2-107(b)(3). Granting the Petitioner a variance to construct a small dwelling would not confer

on him any special privilege that other properties would be denied; however, the large scale of this project is excessive and the grant of variances therefore would confer a special privilege.

In addition, it must be shown that "the variance request is not based on conditions or circumstances that are the result of actions by the applicant; and does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property." *Id.* § 2-107(b)(4)(i-ii). The entire property is a wooded area with steep slopes in the rear. The irregularity and small size of the Petitioner's property are a natural condition inherent in the property.

The Petitioner must then show that "the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area; and will be in harmony with the general spirit and intent of the county critical area program." *Id.* § 2-107(b)(5)(i-ii). The Petitioner's proposal provides for 1:1 mitigation. However, questions remain regarding the removal of trees on the site. We find that removing the trees to the extent proposed by the Petitioner would have a negative impact on stormwater runoff in the Salt Works Creek. Moreover, several property owners in the community testified that preserving the Critical Area is extremely important and that the Petitioner's proposal for such a large house is not in keeping with the harmony and preservation of the Critical Area. We agree. The Petitioner's requested variance can be minimized to reduce the impact to vegetation and the Petitioner requests more variance than necessary for a "reasonable and significant use" of the property. Without meeting the absolute minimum necessary, the variance request flies in the face of the Critical Area program. The program's intent is to protect the Critical Area. The designation of the property as "critical" by the State is not lost on this Board. This land is of critical importance. The Critical Area Program was not created to rubber stamp the development wishes of the applicants. The program's purpose is to limit or eliminate (where possible) development along

the tributaries of the Chesapeake Bay, not merely to provide another regulatory stop before a property owner gets to use property as the owner wishes. An applicant must meet all criteria. Therefore, we find that the Petitioner's proposal is not within the "general spirit and intent of the county critical area program." *Id.* § 2-107(b)(5)(ii).

Next, the Petitioner must show that "the variance is the minimum variance necessary to afford relief." *Id.* § 2-107(c)(1). The Petitioner's proposed house is at least 2,300 square feet in size (with additional basement area) with only a twelve foot front setback. There was no explanation why the structure must consist of 2,300 square feet. We are left wondering, why not 2,000 square feet or 1,000 square feet? Until recently, the Zoning Regulations required homes to contain at least 600 square feet. While the requirement continues to apply in this case², the Code no longer imposes a minimum house size. See, id., Section 10-105(a). Thus, there is no legal reason the house cannot be made significantly smaller. There is no evidence in the record to show why the house must be the size requested, other than the desire of the Petitioner. When a variance is requested, that variance must be the minimum necessary to afford relief from the action of the regulation – not the minimum desire of a particular applicant. Does this property have sufficiently significant physical constraints to justify the grant of a variance? Yes. Does this request for a 2,300 square foot house represent the minimum variance? No. There is no question that the requested variances are not the minimum necessary for the Petitioner to utilize his property.

Finally, the Petitioner must show that "the granting of the variances will not alter the essential character of the neighborhood or district in which the lot is located; substantially impair the appropriate use or development of adjacent property; be contrary to acceptable clearing and

² The zoning regulations have been repealed and reenacted into Article 27 of the Code pursuant to Council Bill 4-05. However, that Council Bill specifically excludes applications for special exceptions and variances filed on or before April 4, 2005 from its application. Therefore, we apply the standards as they existed prior to the effective date of Bill 4-05, being May 12, 2005.

replanting practices required for development in the critical area; or be detrimental to the public welfare.” *Id.* § 2-107(c)(2)(i-iv). This Board will address these issues in order. First, as we stated previously, the Petitioner’s proposed house will alter the essential character of the neighborhood. Although there are a variety of different sized houses in the neighborhood, the immediate community is of small cottage size houses. This request would add a large home on steep slopes and change the essential character of this neighborhood from its quaint cottage nature.

The Petitioner’s proposal would substantially impair the use of adjacent property. Many of the surrounding properties are undeveloped, wooded areas and properties that are developed with small cottages in a wooded setting. The Petitioner’s proposal would substantially impair the use of adjacent property because the home is much too large given the environmental constraints of the steep slopes and vegetation. If development of this scale were approved, the clearing area would be much too great to not impact other developments.

As we addressed above, according to the Petitioner’s proposal, there will be 1:1 mitigation for disturbance outside of the buffer. Thus, we find that the proposal technically conforms with “the clearing and replanting practices required for development in the critical area.” Anne Arundel County Code, Article 3, Section 2-107(c)(2)(iii).

Lastly, we find that granting the variances for the Petitioner’s proposal would be “detrimental to the public welfare.” *Id.* § 2-107(c)(2)(iv). Under normal circumstances, the Petitioner would be proposing to do exactly what should be done in a residential neighborhood, build a house. However, due to the property’s location in the Critical Area and the presence of steep slopes, the public’s welfare must be protected as required by the state Critical Area Program. Without minimizing this variance request, the proposal cannot support the public’s

welfare. We find that granting the variance would be detrimental to the public welfare because there are more efficient ways of using the property.

Therefore, this Board finds that the Petitioner has not met his burden and the requested variances must be denied.

ORDER

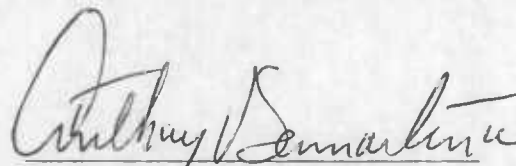
For the reasons set forth in the foregoing Memorandum of Opinion, it is this 6th day of JAN., 2006, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's request for a twenty-eight (28) foot variance to the required forty (40) foot minimum front lot line setback is **DENIED** and the Petitioner's request for a variance to disturb steep slopes in the Critical Area is **DENIED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 60 days of the date of the expiration of the appeals period; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY


Anthony V. Lamartina, Chairman



Arnold W. McKechnie, Member

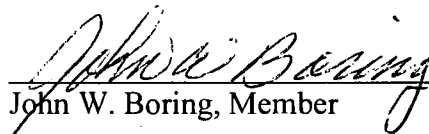


William Moulden, Member

(Michael Topper, Vice Chairman; and John Vance N. Remillard, Member, did not participate in this appeal.)

DISSENT

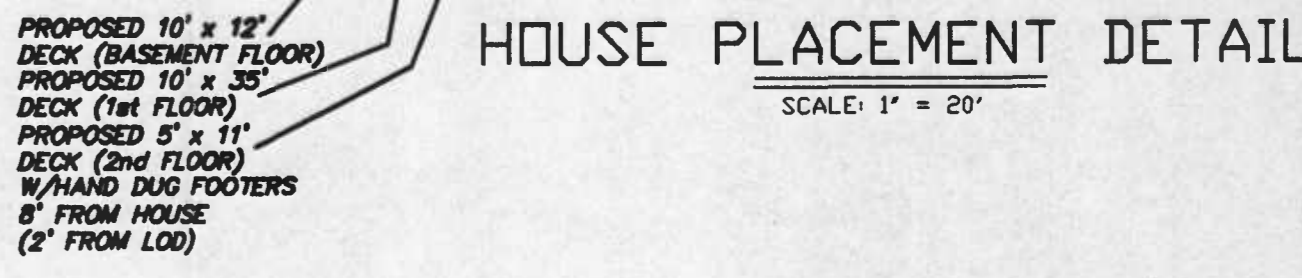
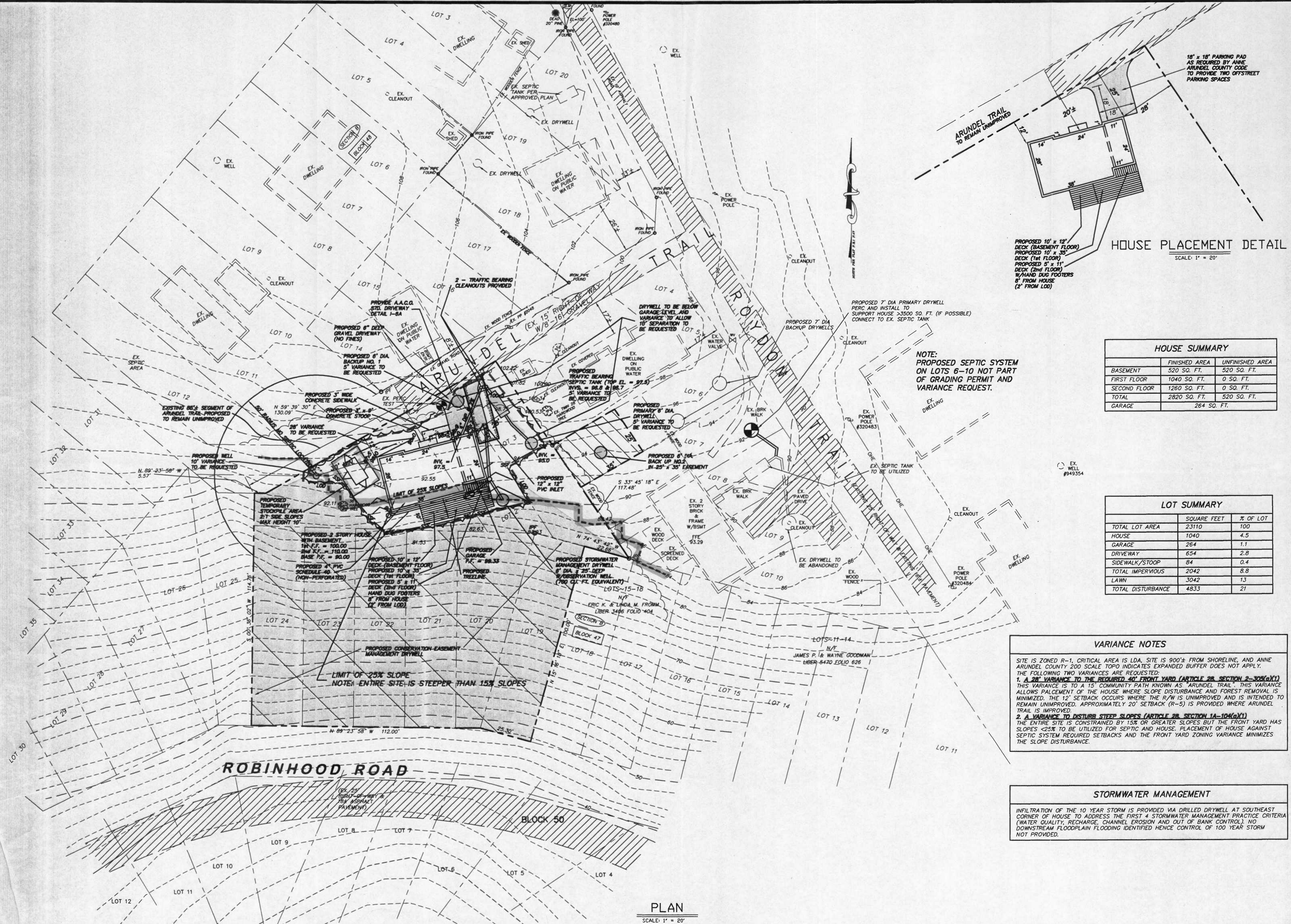
We believe that the Petitioner's request represents a reasonable use of this property. The land is uniquely shaped and substandard in size. There can be no development of this lot without the grant of the requested variances.



John W. Boring, Member



Ray J. Jicka, Member



HOUSE SUMMARY

	FINISHED AREA	UNFINISHED AREA
BASEMENT	520 SQ. FT.	520 SQ. FT.
FIRST FLOOR	1040 SQ. FT.	0 SQ. FT.
SECOND FLOOR	1260 SQ. FT.	0 SQ. FT.
TOTAL	2820 SQ. FT.	520 SQ. FT.
GARAGE	264 SQ. FT.	

LOT SUMMARY

	SQUARE FEET	% OF LOT
TOTAL LOT AREA	23110	100
HOUSE	1040	4.5
GARAGE	264	1.1
DRIVEWAY	654	2.8
SIDEWALK/STOOP	84	0.4
TOTAL IMPERVIOUS	2042	8.8
LAWN	3042	13
TOTAL DISTURBANCE	4833	21

VARIANCE NOTES

SITE IS ZONED R-1, CRITICAL AREA IS LDA, SITE IS 900± FROM SHORELINE, AND ANNE ARUNDEL COUNTY 200 SCALE TOPO INDICATES EXPANDED BUFFER DOES NOT APPLY. THE FOLLOWING TWO VARIANCES ARE REQUESTED:

1. **A 28' VARIANCE TO THE REQUIRED 40' FRONT YARD (ARTICLE 28, SECTION 2-302(G)(1))**
THIS VARIANCE IS TO A 15' COMMUNITY PATH KNOWN AS 'ARUNDEL TRAIL'. THIS VARIANCE ALLOWS PLACEMENT OF THE HOUSE WHERE SLOPE DISTURBANCE AND FOREST REMOVAL IS MINIMIZED. THE 12' SETBACK OCCURS WHERE THE R/W IS UNIMPROVED AND IS INTENDED TO REMAIN UNIMPROVED. APPROXIMATELY 20' SETBACK (R-5) IS PROVIDED WHERE ARUNDEL TRAIL IS IMPROVED.

2. **A VARIANCE TO DISTURB STEEP SLOPES (ARTICLE 28, SECTION 1A-104(G)(1))**
THE ENTIRE SITE IS CONSTRAINED BY 15% OR GREATER SLOPES BUT THE FRONT YARD HAS SLOPES <25% TO BE UTILIZED FOR SEPTIC AND HOUSE. PLACEMENT OF HOUSE AGAINST SEPTIC SYSTEM REQUIRED SETBACKS AND THE FRONT YARD ZONING VARIANCE MINIMIZES THE SLOPE DISTURBANCE.

STORMWATER MANAGEMENT

INFILTRATION OF THE 10 YEAR STORM IS PROVIDED VIA DRILLED DRYWELL AT SOUTHEAST CORNER OF HOUSE TO ADDRESS THE FIRST 4" STORMWATER MANAGEMENT PRACTICE CRITERIA (WATER QUALITY RECHARGE, CHANNEL EROSION AND OUTF OF BANK CONTROL). NO DOWNSTREAM FLOODPLAIN FLOODING IDENTIFIED HENCE CONTROL OF 100 YEAR STORM NOT PROVIDED.

REVISIONS

NO.	DATE	DESCRIPTION

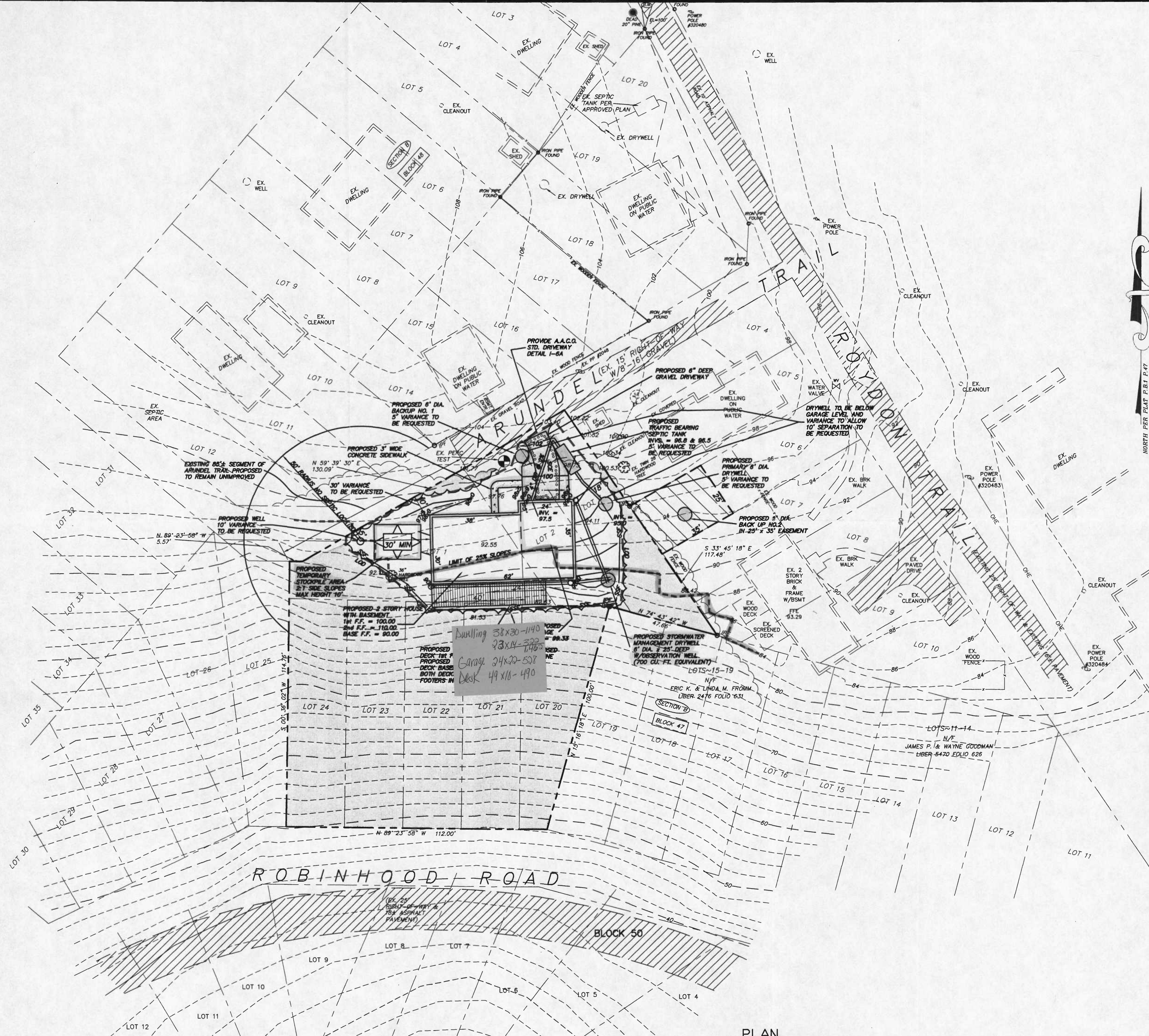
GRSDING, SEPTIC, VARIANCE, SEDIMENT AND EROSION CONTROL PLAN

GAMMA ENGINEERING
1203 WEST ST. SUITE A
ANNAPOLIS, MD 21401
(410) 626-1070

LOTS 1-3 & 19-24, SECTION B
'EPPING FOREST', BLOCK 47
TAX MAP 45, GRID 3, PARCEL 42
2nd DISTRICT
ANNE ARUNDEL COUNTY, MD

DEVELOPER:
KRAEMER
460 HONERENG TRAIL
ANNAPOLIS, MD. 21401





VARIANCE NOTES

SITE IS ZONED R-1, CRITICAL AREA IS LDA, SITE IS 900± FROM SHORELINE SO EXPANDED BUFFER DOES NOT APPLY.

THE FOLLOWING TWO VARIANCES ARE REQUESTED:

1. A 30' VARIANCE TO THE REQUIRED 40' FRONT YARD (ARTICLE 28, SECTION 2-305(a)(1))
 THIS VARIANCE IS TO A 15' COMMUNITY PATH KNOWN AS 'ARUNDEL TRAIL'. THIS VARIANCE ALLOWS PLACEMENT OF THE HOUSE WHERE SLOPE DISTURBANCE AND FOREST REMOVAL IS MINIMIZED. THE 10' SETBACK OCCURS WHERE THE R/W IS UNIMPROVED AND IS INTENDED TO REMAIN UNIMPROVED. APPROXIMATELY 25' SETBACK (R-5) IS PROVIDED WHERE ARUNDEL TRAIL IS IMPROVED.

2. A VARIANCE TO DISTURB STEEP SLOPES (ARTICLE 28, SECTION 1A-104(a)(1))
 THE ENTIRE SITE IS CONTAINED BY 15% OR GREATER SLOPES BUT THE FRONT YARD HAS SLOPES <25% TO BE UTILIZED FOR SEPTIC AND HOUSE. PLACEMENT OF HOUSE AGAINST SEPTIC SYSTEM REQUIRED SETBACKS AND THE FRONT YARD ZONING VARIANCE MINIMIZES THE SLOPE DISTURBANCE.

PLAN
 SCALE: 1" = 20'

REVISED	DATE	REVISIONS

GRSING, SEPTIC, VARIANCE, SEDIMENT AND EROSION CONTROL PLAN

GAMMA ENGINEERING
 1203 WEST ST. SUITE A
 ANNAPOLIS, MD 21401
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LOTS 1-3 & 20-24, SECTION B
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 TAX MAP 45, GRID 3, PARCEL 42
 2nd DISTRICT
 ANNE ARUNDEL COUNTY, MD

DEVELOPER:
 KRAEMER
 460 HONERENG TRAIL
 ANNAPOLIS, MD. 21401



RECEIVED
 FEB 7 2005
 CHESAPEAKE DIVISION
 CRITICAL AREA COMMISSION